

SWBT has taken a very narrow ruling of the FCC and attempts to expand it to unbundling of all interoffice facilities. The FCC found that it is technically feasible for ILECs to unbundle such elements and that it will decrease the cost for CLEC entry to unbundle these elements. In ¶¶444-5, the FCC specifically addresses DCS, requiring that ILECs “offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services” and finding that it is technically feasible for ILECs to provide DCS functionality to competitors that purchase unbundled interoffice facilities. The FCC rejects the use of existing tariffs for service to IXCs for other unbundled interoffice services in the same section of the order. FCC Order ¶448.

AT&T’s LBO is consistent with the FCC Order implementing the 1996 Act and is adopted.

16. SHOULD COOPERATIVE TESTING ARRANGEMENTS BETWEEN SWBT AND AT&T BE REQUIRED FOR NETWORK ELEMENTS?

It is AT&T’s position that the Commission should order AT&T and SWBT to jointly develop a process to test facilities used by AT&T to provide service. SWBT states that it has offered to provide cooperative testing on mutually agreeable schedules at the turn up of new equipment with testing priced based upon time and equipment.

The ALJ adopts SWBT’s LBO. In arguing the technical feasibility of subloop unbundling, AT&T contends that it has the capability and will perform its own testing in many instances. If these assertions are correct, SWBT’s offer to test at the turn up of service is reasonable and adequate.

17. WHAT SHOULD BE THE APPLICABLE DEPRECIABLE LIVES/DEPRECIATION RATES FOR SWBT ASSETS UTILIZED IN THE COST STUDIES?

AT&T proposes the use of economic lives approved for SWBT by the FCC in Docket No. 96-22. SWBT alleges that the economic lives approved by the FCC are not adequate and not consistent with the economic lives used by its competitors.

Pursuant to Act 77 and SWBT's election filed February 4, 1997 under the Act, the Commission no longer has the authority to review and approve the depreciation rates of SWBT. However, 47 U.S.C. §252(b)(4) requires that the Commission resolve all unresolved issues in an arbitration. Therefore, for the purpose of this arbitration, the Commission must approve depreciation rates for SWBT to be used in the cost studies.

SWBT advocates use of depreciation rates which are consistent with those rates which AT&T uses for financial reporting purposes and which comply with 47 C.F.R. §51.505(b)(3). The FCC has determined that in setting prices for UNEs "a cost-based pricing methodology based on forward-looking economic costs" should be used. FCC Order ¶620. The rates proposed by AT&T were approved by the FCC for use in a rate of return environment. The rates proposed by SWBT are more forward-looking in compliance with the FCC Order. The LBO of SWBT meets this requirement.

18. WHAT SHOULD BE SWBT'S COST OF CAPITAL USED IN THE COST STUDIES?

AT&T recommends a cost of capital of 10.36% and SWBT recommends 10.69%. In the alternative, SWBT recommends a higher cost of capital of 11.25%.

AT&T's LBO is a current calculation of SWBT's cost of capital which is slightly higher

than the midpoint of AT&T's recommended range. According to Dr. William Avera, SWBT's recommendation is a cost of capital estimate made by SWBT in 1995. Tr. 63. Just as in the previous issue, the FCC has determined that pricing should be based upon forward-looking economic costs. A cost of capital using the most current data should be a better indicator of forward-looking economic costs than an estimate made in 1995. Further, SWBT provides no real justification for the figure recommended except to note that it was estimated by SWBT in 1995.

The ALJ adopts AT&T's LBO.

19. HOW SHOULD THE COST OF INTERCONNECTION AND UNBUNDLED NETWORK ELEMENTS BE CALCULATED, AND WHAT PRICES SHOULD BE ESTABLISHED?

AT&T proposes that the cost of UNEs be based upon an appropriate Total Element Long Run Incremental Cost (TELRIC) methodology. AT&T submitted an LBO based upon 50% of the rates reflected in SWBT's cost studies as a compromise proposal. SWBT contends that the cost studies proposed by SWBT are the appropriate basis for establishing the costs and rates for UNEs.

Act 77 requires that "prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit." Act 77 §9(e). In its brief, AT&T argues that the phrase "actual costs" should be interpreted to be forward-looking costs consistent with the FCC's Order and the intent of the 1996 Act. However, the language of Act 77 is more consistent with the interpretation given by SWBT in its brief that actual costs means actual book costs. As Act 77 became law after the conclusion of the hearing, neither party submitted cost studies which fully comply with the requirements of the Act. The

ALJ must apply the Act to this arbitration as the applicable law in this State and reach a decision on this issue which complies with the requirements of §9(e) of Act 77.

The cost studies submitted by SWBT most closely approximate actual costs. As SWBT witness Mr. Paul Cooper stated “in the aggregate, these rates represent realistic levels of costs which will approximate the recovery of actual book costs.” Tr. 2301-2. AT&T’s witness, Mr. Daniel Rhinehart stated that the forward-looking common cost factor proposed by SWBT “is entirely embedded cost.” Tr. 2355. One of AT&T’s criticisms of the SWBT cost studies is that the studies are based upon actual embedded costs. The evidence reflects that SWBT’s cost studies are based in large measure on embedded costs. Therefore, SWBT’s LBO is adopted as in compliance with Act 77 §9 (e), with the following modifications to comply with Act 77. To comply with the requirement that UNE pricing be based upon actual costs, SWBT should remove the inflation factors from its cost studies. Inflation factors are forward-looking adjustments which do not reflect actual costs. In addition, the cost of capital should be adjusted to reflect the finding in Issue No. V (18).

20. SHOULD SWBT’S COST STUDIES BE USED FOR PRICING SERVICES RESALE, UNBUNDLED NETWORK ELEMENTS, INTERCONNECTION AND COLLOCATION?

Resale pricing has been resolved in Issue No. I (8) and will not be addressed further. The remainder of the issue is addressed in Issue V (19) above.

As to all cost studies in the arbitration, SWBT contends that it “reserves the right” to modify those studies and the resulting rates should the FCC not approve its application to provide interLATA toll service pursuant to 47 U.S.C. §271 on the basis of the rates produced by

those studies. Tr. 2367-8.

21. SHOULD "VALUE OF SERVICE PRICING" BE USED IN SETTING RATES FOR UNBUNDLED ELEMENTS?

AT&T states that "value of service pricing" is in violation of the 1996 Act and Act 77.

SWBT contends that it is not.

The 1996 Act requires that UNEs be priced based upon the cost of providing the UNE. Act 77 provides that the price be set on the basis of costs. AT&T's LBO complies with both Acts and is adopted.

VI. PHYSICAL INTERCONNECTION/COLLOCATION

1. SHOULD AT&T BE PERMITTED TO DESIGNATE THE POINT OF CONNECTION TO SWBT'S UNES?

AT&T's position is that SWBT must make the connection at any technically feasible point requested. SWBT states that it will provide four specified interconnection options and that those options meet the requirements of the FCC rules.

SWBT's LBO is in compliance with 47 C.F.R. §51.305 and is adopted.

2. WHAT TYPES OF TELECOMMUNICATIONS EQUIPMENT MAY BE COLLOCATED ON SWBT'S PREMISES?

AT&T states that the parties have resolved this issue. The ALJ will adopt SWBT's LBO as reflecting that agreement.

3. SHOULD NEW ENTRANTS BE ALLOWED TO INSTALL REMOTE SWITCH MODULES?

AT&T states that the parties have resolved this issue. The ALJ will adopt SWBT's LBO as reflecting this agreement.

4. WHAT IS THE PROPER METHOD OF PRICING COLLOCATION?

AT&T contends that collocated services should be priced based on TELRIC studies and should set standard configurations and standard prices for each configuration. SWBT states that each collocation arrangement is unique based on the office and the request for collocation.

SWBT states that it will apply a standardized cost factor for recurring costs.

According to SWBT it will apply the same collocation pricing to all providers on a competitively neutral basis. However, the specific request of each provider including the need for floor space, the preparation work necessary and other factors must be priced on an individual basis due to the variables involved in such requests. Tr. 227-8,451-7. SWBT's LBO is reasonable and is adopted.

5. WHAT ARE THE MINIMUM REQUIREMENTS FOR COLLOCATION OF AT&T'S EQUIPMENT AT SWBT'S PREMISES?

AT&T states that it should be able to collocate either physically or virtually in all SWBT huts, vaults, cabinets, central offices, tandem offices or other similar buildings or structures of SWBT that house network facilities. SWBT's basic disagreement on this issue is its contention that there is not room to provide a segregated space for AT&T to collocate in a hut or vault.

The FCC interpreted the term "premises" for purposes of collocation broadly "to include LEC central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities ... and

any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures.” FCC Order ¶573. AT&T’s LBO is consistent with the FCC’s Order implementing the 1996 Act and is adopted.

VII. RECIPROCAL COMPENSATION

1. SHOULD BILL AND KEEP BE USED AS A RECIPROCAL COMPENSATION ARRANGEMENT FOR TRANSPORT AND TERMINATION OF LOCAL TRAFFIC ON A TEMPORARY OR PERMANENT BASIS?

AT&T maintains that a bill and keep arrangement is appropriate for the first nine months after the initial passage of commercial traffic between the two companies. Thereafter, bill and keep would be maintained unless and until it is demonstrated that a disparity in the levels of traffic terminated exists. If there is a disparity, AT&T requests that the rates be set at TELRIC.

SWBT alleges that bill and keep is not an option unless both parties waive mutual recovery of reciprocal compensation and SWBT does not agree to such a waiver based upon its contention that the traffic will not be equal.

The 1996 Act provides that terms and conditions for reciprocal compensation shall not be considered just and reasonable unless such terms provide for mutual and reciprocal recovery of transport and termination. This section does not preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations that waive mutual recovery such as bill and keep arrangements. 47 U.S.C. §252(d)(2). The FCC recognized three (3) methods for establishing transport and termination rates, including bill and keep arrangements. For bill and

keep arrangements, the states may apply a general presumption that traffic is in balance. A carrier seeking to rebut this presumption must satisfy the burden of proof that traffic is not in balance. FCC Order ¶113.

SWBT alleges that the traffic will not be balanced but it offers no proof of this assertion. “At this point, there is no reason to believe that either costs or the level of terminating traffic will be asymmetrical. Therefore, to establish a mechanism which would require substantial administrative effort for carriers to track usage and bill compensation rates would be an inefficient use of resources. . . .” Tr. 875. The position of AT&T will allow the parties to monitor the traffic and evaluate the merits of the bill and keep arrangement on the basis of actual experience rather than supposition. Therefore, the ALJ adopts the LBO of AT&T.

2. IF BILL AND KEEP IS NOT ADOPTED, WHAT SHOULD BE THE RATES FOR RECIPROCAL COMPENSATION?

In view of the decision on Issue No. VII (1), this issue is not applicable.

3. SHOULD RECIPROCAL COMPENSATION OR ACCESS CHARGES APPLY FOR EXTENDED AREA CALLS?

AT&T contends that for purposes of reciprocal compensation, traffic from extended area calls should be treated as local traffic. SWBT states that calls between SWBT exchanges and the exchanges of other ILECs that share mandatory local calling scopes and all other calls between SWBT exchanges and other exchanges where optional calling plans exist should not be considered local traffic and access charges should apply.

The ALJ adopts the LBO of AT&T. The FCC reserved to states the determination of

geographic areas to be considered local calling areas. In general, telephone service subscribers consider local calls to be those calls which have 7-digit dialing patterns, including mandatory extended area service and Metroplus service. If a CLEC cannot offer the same 7-digit dialing area as an ILEC as local calling service area, the CLEC will be severely handicapped in competing with the ILEC. AT&T contends that all traffic which originates or terminates within the mandatory local calling area of SWBT, including extended area service should be considered local to ensure that AT&T can match the calling area of SWBT. Imposing access charges on such traffic would require that the AT&T either absorb those additional charges or charge its local subscribers toll rates for service SWBT offers as local. Either scenario would be anticompetitive and in conflict with the 1996 Act.

4. WHAT ARRANGEMENTS SHOULD GOVERN TRANSIT TRAFFIC ARRANGEMENTS?

The positions of the parties appear to be in agreement on this issue. SWBT states that the transit rate should be comprised of the proposed unbundled tandem switching rate and the interoffice common transport rate. The ALJ adopts the LBO of SWBT.

5. WHAT RATE SHALL APPLY WHEN SWBT TERMINATES CALLS ON A NEW ENTRANTS NETWORK?

In view of the decision on Issue No.VII (1), this issue is not applicable.

VIII. NUMBER PORTABILITY

1. WHAT METHODS OF INTERIM NUMBER PORTABILITY SHOULD SWBT BE REQUIRED TO PROVIDE?

AT&T requests interim number portability through four options which it contends are technically feasible and necessary to meet the needs of AT&T's customers. SWBT offers to provide two forms of number portability which it maintains conform to the FCC's directives on interim number portability. SWBT states that it will implement permanent number portability in accordance with the schedule set forth in the FCC Number Portability Order.

SWBT's position is reasonable and fulfills its requirements to offer interim number portability in compliance with the FCC Number Portability Order. SWBT's LBO is adopted.

2. WHAT METHOD SHOULD BE USED TO PRICE INTERIM NUMBER PORTABILITY AND WHAT SPECIFIC RATES, IF ANY, SHOULD BE SET FOR SWBT?

AT&T contends that interim number portability should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively neutral basis. SWBT maintains that pending a final decision by the FCC on competitively neutral pricing, all providers of interim number portability should track the cost associated with the service and based upon the FCC's order, direct bill for interim number portability services on a true up and accrual basis.

The FCC has determined that the costs for this service should be assessed on a competitively neutral basis from all telecommunications carriers. Therefore, this is a generic issue involving all telecommunications providers and only two of these providers are parties to this docket. No decision should be made in this proceeding which would prejudice the rights of other telecommunications providers on interim number portability recover. The LBO of SWBT satisfies this requirement and provides a reasonable interim resolution of the issue.

3. WHAT IS THE APPROPRIATE COST RECOVERY MECHANISM FOR INTERIM NUMBER PORTABILITY?

The adoption of SWBT's LBO in Issue No. VIII (2) resolves this issue.

IX. DIALING PARITY AND ACCESS TO NUMBERING RESOURCES

1. SHOULD SWBT PROVIDE LOCAL DIALING PARITY?

AT&T contends that SWBT should provide local dialing parity from SWBT's facilities to AT&T's end-user local exchange customers in parity with similarly situated customers of SWBT. SWBT maintains that it will provide dialing parity for local and interLATA calls but not for intraLATA calls.

47 U.S.C. §251(b)(3) requires that all telecommunications carriers provide dialing parity. The issue specifically concerns local dialing parity. Therefore, AT&T's LBO is adopted.

X. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

General Discussion of Issues:

The primary issue in this section is whether access to such facilities should be governed by SWBT's Master Agreement or whether as AT&T advocates it should be a negotiated agreement incorporated in the Interconnection Agreement. SWBT contends that "the pole attachment agreement must be a stand-alone document containing limitations of liability and other such contract clauses that AT&T inappropriately seeks to strike from SWBT's Master Agreement. SWBT prepared the Master Agreement in an attempt to satisfy the need for a uniform, nondiscriminatory contract. [Cites omitted.] SWBT's contract is reasonable and has not been

deemed inappropriate in any respect by the FCC. . . .” SWBT Brief at 48-9. AT&T contends that access to poles, conduits and rights-of-way should be an appendix to the Interconnection Agreement between AT&T and SWBT subject to the same general terms, conditions and limitations of liability as provided for all other provisions of the agreement.

In an arbitration, the Commission must ensure that the resolution of issues and conditions meet the requirements of 47 U.S.C. §251. 47 U.S.C. §252(c)(1). One of the requirements of 47 U.S.C. §251 is the duty to afford access to poles, conduits and rights-of-way to competing carriers. The issue of access to poles, conduits and rights-of-way is not exempt from the duty to negotiate imposed in the 1996 Act nor from resolution in an arbitration under the Act.

SWBT contends that its Master Agreement must be used because SWBT is obligated to provide access to such facilities to other entities on a nondiscriminatory basis without benefit of an interconnection agreement. The mere fact that access to such facilities is made a part of the Interconnection Agreement does not render it discriminatory. The FCC concluded that the “reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis.” FCC Order ¶1143.

Another reason SWBT cites for using its Master Agreement is that the FCC has not deemed the agreement to be inappropriate. However, as explained in the hearing, the agreement has never been submitted to the FCC and SWBT’s contention is based solely upon its belief that the agreement complies with what SWBT believes the FCC ordered. Tr. 1134.

AT&T argues for a negotiated agreement that is part of the Interconnection Agreement

with AT&T because the Master Agreement is not specific to the negotiations between AT&T and SWBT. The arbitration proceeding is for the purpose of resolving issues between AT&T and SWBT and no other parties. AT&T further contends that the Master Agreement has numerous provisions that are redundant or irrelevant because those provisions are contained in the Interconnection Agreement. Tr. 1127.

The ALJ finds that access to poles, conduits and rights-of-way should be a part of the interconnection agreement and should not be governed by the separate Master Agreement of SWBT. The arbitration is for the purpose of resolving issues specific to the negotiations between SWBT and AT&T. No other parties may participate in the arbitration and the issue of access to poles, conduits and rights-of-way is specific to the two parties and the Interconnection Agreement between those parties. Act 77 §9(j).

1. SHOULD THE TERMS "CONDUIT" AND "CONDUIT SYSTEM" INCLUDE CONTROLLED ENVIRONMENTAL VAULTS AND OTHER SWBT FACILITIES WHICH MAY BE CONNECTED TO SWBT'S CONDUIT?

AT&T contends that it should have access to controlled environmental vaults (CEV) as an extension of the conduit system. SWBT maintains that CEVs are 'connected to but not a'part of' SWBT's conduit system.

The ALJ adopts the LBO of SWBT. AT&T's definition is overly broad. AT&T has access to CEVs for the purpose of collocation.

2. SHOULD THE TERM "COST" BE DEFINED IN THE POLES, CONDUITS AND RIGHTS-OF-WAY APPENDIX, AND SHOULD IT BE DEFINED AS AT&T PROPOSES?

AT&T contends that this issue has been resolved with the agreement to amend certain definitions. SWBT contends that its Master Agreement without amendment should be approved.

Based upon the general discussion above, the ALJ adopts the LBO of AT&T.

3. BEFORE SWBT TRANSFERS ITS INTEREST IN PROPERTY TO WHICH AT&T HAS ATTACHED FACILITIES, MUST THE TRANSFEREE AGREE TO BE BOUND BY THE TERMS OF THE POLES, CONDUITS, AND RIGHTS-OF-WAY APPENDIX?

AT&T contends that if SWBT transfers ownership of property which has AT&T facilities attached, that the transferee should agree to be bound by the terms of the Interconnection Agreement with regard to poles, conduits and rights-of-way. SWBT states that this is not necessary and that there is nothing in any relevant law which would preclude SWBT's transfer of ownership of facilities. According to SWBT, if it transfers ownership to another utility, that utility would be required under the Pole Attachment Act to enter into an agreement with AT&T.

The ALJ finds nothing in the position of AT&T which seeks to preclude SWBT from transferring title to property. AT&T submitted other agreements which SWBT has entered into which contain the transfer restrictions AT&T requests. It is reasonable for AT&T to request some assurance that its investment will be protected, if SWBT transfers the property on which AT&T has facilities. Tr. 721. The ALJ adopts AT&T's LBOs.

4. ISSUE RESOLVED

5. ISSUE RESOLVED

6. ISSUE RESOLVED

7. MUST SWBT NOTIFY AT&T, WITHIN TWENTY DAYS AFTER APPLICATION, OF ANY KNOWN ENVIRONMENTAL HAZARDS AT A SITE FOR WHICH AT&T HAS SUBMITTED AN APPLICATION FOR ACCESS TO POLES, DUCTS, CONDUITS OR

RIGHTS-OF-WAY?

AT&T stated that it is merely seeking notifications of known environmental hazards in areas that AT&T has stated an intent to occupy. SWBT contends that it will notify AT&T of such hazards but does not believe that it is necessary to have a twenty (20) day notice period.

AT&T's LBO is reasonable and may save both parties unnecessary expense in processing an application.

8. SHOULD CHARGES FOR NEWLY-LICENSED POLE ATTACHMENTS AND CONDUIT OCCUPANCY BE PRORATED TO REFLECT THE DATE THE ATTACHMENT OR OCCUPANCY ACTUALLY OCCURRED, RATHER THAN REQUIRING AT&T TO PAY IN SIX-MONTHS BLOCKS REGARDLESS OF THE ACTUAL DATE OF ATTACHMENT OF OCCUPANCY?

AT&T requests that attachment fees be prorated from the date of occupancy. SWBT contends that semiannual proration is adequate and any thing further would be administratively cumbersome.

AT&T LBO is reasonable and is adopted. Tr. 1188-9.

9. WHAT PROCEDURES/PROCESS MUST AT&T FOLLOW BEFORE PLACING A CABLE ON/IN A POLE, DUCT, CONDUIT, OR RIGHT-OF-WAY THAT IS UNDER THE OWNERSHIP OR CONTROL OF SWBT?

AT&T contends that it should have the same freedom to apply its engineering judgement in accessing facilities as SWBT affords itself and that AT&T should be permitted to perform assessments of plant records and availability of space. Upon determination of availability,

AT&T would immediately be able to occupy the space. SWBT proposes that AT&T follow a procedure of selecting space and within 45 days SWBT would advise whether access is granted.

AT&T has the right to access the poles, conduits and rights-of-way of SWBT but it does not have ownership or control of those facilities. SWBT retains management and control of its facilities and AT&T's proposal would infringe upon SWBT's rights. The LBO of SWBT is adopted.

10. SHOULD THE STATEMENT OF PURPOSE IN THE POLES APPENDIX INCLUDE A STATEMENT THAT SWBT WILL PROVIDE AT&T WITH "NONDISCRIMINATORY ACCESS" TO POLES, DUCTS, CONDUITS, OR RIGHT-OF-WAY OWNED OR CONTROLLED BY SWBT AS PROVIDED IN THE TELECOMMUNICATIONS ACT OF 1996?

AT&T contends that the statement of purpose in the Poles Appendix to the Interconnection Agreement should include a statement that SWBT will provide AT&T with "nondiscriminatory access". SWBT contends that such a statement is not necessary.

According to SWBT, the language in the statement of purpose is sufficient to embrace the concept. If this is true, the addition of the phrase nondiscriminatory access will only enhance the clarity of the statement. The ALJ adopts AT&T's LBO.

11. IS AT&T AN "AUTHORIZED CONTRACTOR" FOR PURPOSES OF PERFORMING WORK ON OR WITHIN POLES, CONDUITS, AND RIGHT-OF-WAY, AND MAY AT&T PERFORM WORK ITSELF AS AN AUTHORIZED CONTRACTOR AS STIPULATED IN TEXAS?

AT&T contends that this issue is resolved and the testimony of AT&T's witness and the

SWBT witness would indicate agreement. Tr. 1145-1148. SWBT returns to the terms of its Master Agreement in its LBO.

Having found that the Master Agreement of SWBT is not adopted for use in the arbitration, the ALJ adopts the LBO of AT&T. See General Discussion.

12. ISSUE RESOLVED.

13. MUST AT&T PROVIDE FIVE WORKING DAYS' NOTICE BEFORE ENTERING SWBT'S CONDUIT SYSTEM TO PERFORM NON-EMERGENCY WORK OPERATIONS, OR MAY AT&T PROVIDE 48 HOURS NOTICE AS RULED BY THE PUBLIC UTILITY COMMISSION OF TEXAS, ESPECIALLY WHERE AT&T HAS AGREED TO PROVIDE TEN (10) WORKING DAYS' NOTICE AS A COURTESY WHEN FEASIBLE?

AT&T states that this issue is resolved. SWBT's statement of position appears to agree with AT&T.

14. MUST AT&T PAY FOR AN EMPLOYEE OF SWBT TO OBSERVE CONSTRUCTION WORK WHERE THE WORK IS BEING DONE BY A CONTRACTOR WHICH HAS BEEN APPROVED BY SWBT, OR WHERE THE WORK IS PERFORMED BY QUALIFIED AT&T PERSONNEL?

Where AT&T is using an authorized contractor, it contends that it should not have to pay for an SWBT employee to observe the work. AT&T contends that it should not be required to pay SWBT's oversight expenses but it would be willing to pay half the cost of having one observer present when work is performed by a contractor not approved by both AT&T and SWBT. SWBT maintains that it is reasonable for SWBT to have an observer present when work being performed could jeopardize the integrity and security of SWBT's network and that the cost causer should bear the reasonable cost of the observer. SWBT states that it has agreed to split the cost of the observer in other states.

SWBT uses observers for its own projects when it uses a contractor to perform work on poles and conduits to ensure that no damage is done to existing facilities. Tr. 1149. SWBT must protect the integrity and security of its facilities regardless of the access its grants to others. It is reasonable for SWBT to require the presence of an observer and to require that the party causing the cost pay for the observer. SWBT's LBO is adopted.

15. MAY AT&T REQUEST PERMISSION TO INSPECT SWBT'S POLE AND CONDUIT MAPS AND RECORDS, CABLE PLAT MAPS, OR OTHER PLANT LOCATION RECORDS ON TWO BUSINESS' DAYS NOTICE AS STIPULATED IN TEXAS, OR MUST AT&T WAIT TEN (10) BUSINESS DAYS TO REVIEW RECORDS?

AT&T states that this issues has been resolved. According to AT&T, SWBT agrees to provide access to its records on two working days notice with AT&T agreeing to give up to ten days notice where feasible. SWBT cites the provisions of its Master Agreement as controlling in its LBO.

In the hearing, SWBT appeared to agree to AT&T's LBO. Tr. 1195. The ALJ adopts AT&T's LBO.

16. MAY SWBT REQUIRE ADVANCE PAYMENT OF THE FULL AMOUNT OF THE ESTIMATED COST OF MODIFYING ITS OUTSIDE PLANT FOR AT&T'S ACCESS, OR MAY AT&T PAY HALF OF THE COST AFTER THE WORK IS 50% COMPLETE, AND THE REMAINDER AT COMPLETION, AS RULED BY THE PUBLIC UTILITY COMMISSION OF TEXAS?

AT&T proposes to pay 50% of the estimated cost of modifications when half the work is completed and the remainder upon completion of the work. SWBT contends that AT&T should pay the full estimated cost in advance of the work. SWBT contends that this is reasonable

because SWBT has used this practice for years.

Advance payment of the estimated cost of a construction project is not made by SWBT to contractors it employs. Tr. 1196. The advance payment based upon an estimate is an unusual practice which is not typical of construction contracts, including SWBT's. In addition, SWBT wants full payment in advance based upon an estimate which may be more or less than the final cost. This could result in the need for an additional process to bill for or refund money based upon the actual costs incurred. The ALJ adopts AT&T's LBO.

17. MAY AT&T BE REIMBURSED ON A PRO-RATA BASIS BY PARTIES BENEFITING FROM MODIFICATIONS FOR WHICH AT&T HAS PAID, AND MUST SWBT ESTABLISH A METHODOLOGY FOR REIMBURSEMENT, AS RULED BY THE PUBLIC UTILITY COMMISSION OF TEXAS?

AT&T maintains that when it bears the entire cost of a modification and others benefit from those modifications, pro-rata reimbursement is fair and appropriate. AT&T requests that SWBT develop a methodology for the reimbursement because SWBT is the only party that will be in possession of the applications and records relating to the modifications. SWBT states that the FCC has determined that reimbursement is appropriate when other carriers benefit from modifications. SWBT states that if a third party later uses a space which AT&T has borne the cost of modifying, if requested by AT&T, SWBT will provide information to assist AT&T in determining any amount the third party may owe AT&T.

AT&T's LBO is adopted. SWBT is the party in possession of the records necessary to

determine whether reimbursement is appropriate and the amount of such reimbursement. The position of SWBT puts all responsibility on AT&T to discover that reimbursement may be appropriate and to obtain the necessary information from SWBT.

18. IF AT&T IS WILLING TO PERFORM MAKE-READY WORK PROPOSED BY SWBT, AND SWBT AGREES THAT AT&T MAY PERFORM THE WORK, MUST AT&T PERFORM THE WORK "IN ACCORDANCE WITH SWBT'S PLANS AND SPECIFICATIONS?"

AT&T contends that if it performs make-ready work, it should not be bound by SWBT's plans and specifications. It is SWBT's position that the work should be performed according to SWBT's specifications.

SWBT's LBO is adopted. The facilities are SWBT's and SWBT is responsible for maintaining the integrity of its system. Work involving SWBT's facilities should be performed according to SWBT's specifications.

19. ISSUE RESOLVED.

20. ISSUE RESOLVED.

21. SHOULD THE POLES, CONDUITS AND RIGHTS-OF-WAY APPENDIX, WHICH IS PART OF THE INTERCONNECTION AGREEMENT BETWEEN SWBT AND AT&T, CONTAIN PROVISIONS REGARDING PERFORMANCE AND PAYMENT BONDS, INDEMNIFICATION, ASSIGNMENT OF RIGHTS, WAIVER, EFFECTIVE DATE, DISPUTE RESOLUTION, AND GENERAL LEGAL PROVISIONS THAT ARE DIFFERENT FROM THE TERMS AND CONDITIONS OF THE INTERCONNECTION AGREEMENT ADDRESSING THE SAME SUBJECTS?

It is AT&T's position that the Terms and Conditions section of the Interconnection Agreement should contain the general provisions regarding performance and payment bonds, indemnification, waiver and other general legal provisions. SWBT maintains that the legal

provisions set forth in its Master Agreement should be applicable to access to poles, conduits and rights-of-way even though those terms may not be consistent with the terms of the Interconnection Agreement or may be redundant.

AT&T's LBO is adopted. The terms and conditions section of the Interconnection Agreement should be applicable to all aspects of the Interconnection Agreement including access to poles, conduits and rights-of-way.

22. WHAT COMPENSATION SHOULD SWBT RECEIVE FOR AT&T'S USE OF ITS POLES, DUCTS, CONDUITS OR RIGHTS-OF-WAY?

AT&T and SWBT agree on the rates for pole attachments and conduit occupancy. The difference between the two parties is that AT&T contends that SWBT should be reimbursed for reasonable incremental costs actually incurred in making space available to AT&T and only to the extent the work is necessary. SWBT maintains that make ready work should be estimated and executed to meet SWBT's requirements to insure the integrity of SWBT's facilities.

SWBT's LBO is reasonable and is adopted.

23. ISSUE RESOLVED.

24. SHOULD SWBT BE REQUIRED TO PROVIDE ACCESS TO ITS POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY AND UNDER WHAT RATES, TERMS AND CONDITIONS?

25. DOES SWBT'S PROPOSED MASTER AGREEMENT FOR ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY COMPLY WITH THE POLE ATTACHMENT ACT AND APPLICABLE FCC RULES, REGULATIONS, AND GUIDELINES AND, IF NOT, WHAT CHANGES SHOULD BE MADE IN THE PROPOSED MASTER AGREEMENT TO CONFORM TO THE APPLICABLE FEDERAL LAWS?

On these two issues SWBT positions are that its Master Agreement should be approved

because the FCC has not deemed the Master Agreement inappropriate. Basically, SWBT contends that the issues of access to poles, conduits and rights-of-way are not subject to negotiation pursuant to the 1996 Act and that AT&T's only alternative is to file a complaint with the FCC, if it is unwilling to accept SWBT's Master Agreement. SWBT Brief 48-9.

SWBT's position does not comply with 47 U.S.C. §252. Nothing in the 1996 Act prohibits negotiation of access to poles, conduits and rights-of-way nor requires that SWBT's Master Agreement be adopted in an arbitration. AT&T's LBO is adopted.

Issues No. 26-67 concern specific terms of SWBT's Master Agreement. Having found that SWBT's Master Agreement is not controlling and that access to poles, conduits and rights-of-way should be integrated in the Interconnection Agreement as an appendix specific to the agreement between AT&T and SWBT, it is not necessary to further address the terms of SWBT's Master Agreement.

XI. GENERAL TERMS AND CONDITIONS.

1. SHOULD THE INTERCONNECTION AGREEMENT CONTAIN PERFORMANCE STANDARDS?

It is AT&T's position that performance standards, reporting and measurement requirements should be established for all aspects of resale and UNEs. AT &T requests that standards be the same for new entrants as for customers of SWBT. SWBT states that it will provide the same quality of service to AT&T as it provides to its own end users. It is SWBT's

position that any liability for failing to meet performance standards should be limited to the same liability SWBT would have to its own end users. It further states that SWBT is willing to negotiate a liquidated damages provision.

The parties agree that performance standards should be the same for new entrants as they are for SWBT's end users. The area of disagreement is the determination of damages for failure to meet performance standards. Liquidated damages should be limited to serious breaches of performance standards. Such damages should not be imposed for minor infractions or inadvertent errors. SWBT's position is reasonable and should be adopted.

2. ISSUES WITHDRAWN.

3. SHOULD THE AGREEMENT BE IMPLEMENTED WITHOUT IMPAIRING SWBT'S RIGHT TO FILE TARIFFS IN THE NORMAL COURSE OF BUSINESS?

AT&T states that it does not dispute SWBT's right to file tariffs but it disagrees with SWBT's assertion that a tariff may supersede or change the terms of the Interconnection Agreement. SWBT contends that there should be no restrictions on SWBT's ability to file tariffs.

The Interconnection Agreement is a contract which should govern the relationship between AT&T and SWBT. If one party to that agreement may unilaterally change or supersede the terms of that agreement it would be rendered meaningless. AT&T's LBO is adopted.

4. SHOULD SWBT BE REQUIRED TO PROVIDE UNBUNDLED NETWORK ELEMENTS UNENCUMBERED WITH ADDITIONAL COSTS OF INTELLECTUAL PROPERTY RIGHTS?

AT&T's responds to this issue in the affirmative. SWBT contends that SWBT should be

protected from any potential third party claims associated with unbundling.

AT&T's LBO is adopted. "SWBT as the provider of the unbundled network element is responsible to provide all features, functions and capabilities of the individual elements purchased by new entrants." Tr. 154.

5. WHAT LIMITATION OF LIABILITIES SHOULD BE IMPOSED ON THE PARTIES?

AT&T contends that unless otherwise specified in the agreement each party's limitation of liability should not exceed the total of any amounts due and owing plus the amounts charged to the other party under the contract. SWBT contends that the limitations of liabilities should be the amount owed with respect to the service affected by the breach.

Consistent with Issue No. XI (1), the ALJ adopts the LBO of SWBT. This is a reasonable limitation on liability which is consistent with SWBT's liability to other customers.

The ALJ notes that part of SWBT's rationale is that this is the traditional limitation of liability which SWBT has used for decades. SWBT has used the same or similar rationale in other issues in this proceeding. The mere fact that SWBT has used a practice or method of doing business "for decades" or "traditionally" does not ensure that such practice or method complies with the 1996 Act or orders and rules implementing the Act.

6. WHAT SHOULD THE STANDARD ORDER INTERVALS BE FOR UNBUNDLED NETWORK ELEMENTS?

AT&T seeks a two day order interval with a longer period for nonstandard orders of UNEs. SWBT states that it will provide a five day order interval and will commit to a specific date on an individual customer basis for other elements.

Rule 3.01(B)(1)(a) of the Commission's Special Rules - Telecommunications requires that LECs provide service connections for their customers within five days of receipt of an application. SWBT's LBO is consistent with the service order intervals it must use for its own end users and is adopted. However, SWBT should make every effort to reduce this interval where possible and AT&T should monitor this process to ensure that performance times are not consistently excessive.

7. SHOULD THE APSC DECIDE ALL ISSUES THAT ARE DISPUTED BETWEEN THE PARTIES, REGARDLESS OF WHETHER A SPECIFIC ISSUE IS DELINEATED IN TESTIMONY?

AT&T states that the Commission should decide the disputed Interconnection Agreement language. SWBT maintains that only the issues presented in the arbitration should be decided and the parties should be directed to negotiate the agreement based upon the issue decisions.

47 U.S.C. §252(b)(4) requires that the Commission limit its consideration in an arbitration to the issues set forth in the arbitration petition and the response thereto, and that the Commission shall resolve those specific issues. This order decides only those issues delineated for consideration in this proceeding as provided in the 1996 Act and does not address specific language to be used in the Interconnection Agreement. SWBT's LBO is consistent with the 1996 Act and is adopted.

8. ONCE THE ARBITRATION PROCEEDING IS COMPLETE, WHAT PROCESS SHOULD BE USED FOR SUBMISSION OF THE INTERCONNECTION AGREEMENT TO THE APSC?

AT&T's position on this issue conforms to its LBO on Issue No. XI (7) with the addition